IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2791 OF 2006

Shri Shivram Dadabhau Papal
and Ors. ...Petitioners

Versus

Veej Mandal Karmachari Sahakari
Griha Nirman Sanstha, Solapur
and Ors. ....Respondents

Mr.A.A.Kumbhakoni for the petitioners.

Mr.G.S.Godbole for respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

29th November, 2007

P.C. :

1. The petitioners are aggrieved and dissatisfied with an order passed by the Learned Member Maharashtra State Co-operative Appellate court (Mumbai) Bench Pune in Appeal No.54 of 2005 dated 18.2.2006.

2. That order reverses the Co-operative Court's order of injunction in favour of the present petitioners. The Co-operative Court's order impugned before the Co-operative Appellate Court is dated 15.3.2005. That order directs both parties to maintain status-quo.

3. The petitioner is the original disputant who has filed Dispute No.8 of 2003.

4. It is brought to my notice that when the present suit was instituted and an ad-interim order was passed in the application of the petitioner, the contesting respondent no.1 moved a Civil suit being Special Civil suit No.41 of 2003 and in which they applied for temporary injunction against the present petitioners not to obstruct their enjoyment over the suit property. The suit property is the one which is common to the Dispute as well as to the Civil Suit. The order of the Civil Court issuing ad-interim injunction is dated 24.1.2003.

5. Both sides do not dispute that temporary injunction

application is pending before the Civil Court. Today the position is that the order of the Co-operative Court has been reversed by the Co-operative Appellate Court and even this court has not passed any ad-interim orders in the present petition. The petition is pending since 5.4.2006.

6. I enquired from the learned counsel appearing for both sides, as to wether they would be willing to go before the Civil court and have the application for temporary injunction preferred by the first respondent in its suit, decided. The learned counsel appearing for both sides do not object to this course of action. However, Mr.Kumbhakoni, states that the petitioners have an apprehension that the observations of the Co-operative Appellate Court impugned in the instant petition would influence the Civil Court and if appropriate protection is granted, the petitioners do not mind going before the civil court and raising all such pleas as are permissible in law. Mr.Kumbhakoni, after instructions makes a statement that the petitioner in turn would not rely upon the observations of the Co-operative court in the order dated 15.3.2005

which apparently are in favour of the present petitioners.

7. To my mind, the course of action suggested by the petitioners is fair and reasonable. The interest of justice would be subserved if the civil court is directed to dispose off the temporary injunction application pending before it on merits and in accordance with law uninfluenced by any observations of either the Co-operative court or the Co-operative Appellate Court. It would be open for both sides to raise all such pleas as are permissible in law and rely upon documents as well. This writ petition is therefore disposed off with the above directions.

8. Parties to appear before the Trial Court on 12.12.2007 at 11 a.m. and the trial Court to then decide the application pending before it as early as possible and within a period of eight weeks from the date of appearance of parties.

sd/-

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